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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,193	07/24/2003	Leonard M. Patt	480048.456	2690
500 7590 07/24/2007 SEED INTELLECTUAL PROPERTY LAW GROUP PLLC 701 FIFTH AVE SUITE 5400 SEATTLE, WA 98104			EXAMINER MELLER, MICHAEL V	
			ART UNIT 1655	PAPER NUMBER
			MAIL DATE 07/24/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/627,193

Applicant(s)

PATT, LEONARD M.

Examiner

Michael V. Meller

Art Unit

1655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,5-7 and 23-42 is/are pending in the application.
- 4a) Of the above claim(s) 6,7,23-32 and 35-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 33, 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of the specific composition of glycyl-histidyl-lysine:copper (II), epigallocatechin and saline only in the composition in the reply filed on 7/10/2007 is acknowledged. The traversal is on the ground(s) that the elections of species are too limiting and should include all catechins and the other components to be in the elected composition. This is not found persuasive because of the reasons of record and because unless applicant enumerates the elements in the composition (which applicant now has) the claimed composition can read on many different and distinct inventions since they will differ greatly in their structures and functions because of the different components in them.

Thus, claims 6, 7, 23-32, 35-42 are withdrawn from further consideration.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 103***

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pickart in combination with either Mc Cook et al. or JP 406199646.

Pickart teaches that glycyl-L-histidyl-L-lysine: copper (II) is used in a cosmetic for use on the skin, see col. 1, lines 10-20, abstract, col. 5, lines 30-45. Pickart also teaches that saline is used as the "suitable vehicle" for administering the glycyl-L-histidyl-L-lysine: copper (II) topically, see col. 5, lines 30-40.

Mc Cook teaches that Green tea (which clearly contains epigallocatechin as evidenced at col. 2, lines 35-45) is used as a cosmetic to use on the skin, namely the face, see example 2.

JP teaches that green tea is also used here in a cosmetic which also will be applied on the skin, abstract.

It is well known that it is *prima facie* obvious to combine two or more ingredients each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is useful for the same purpose. The idea for combining them flows

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logically from their having been used individually in the prior art. *In re Sussman*, 136 F.2d 715, 718, 58 USPQ 262, 264 (CCPA 1943); *In re Pinten*, 459 F.2d 1053, 173 USPQ 801 (CCPA 1972); *In re Susi*, 58 CCPA 1074, 1079-80; 440 F.2d 442, 445; 169 USPQ 423, 426 (1971); *In re Crockett*, 47 CCPA 1018, 1020-21; 279 F.2d 274, 276-277; 126 USPQ 186, 188 (1960).

The reason or motivation to modify a reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant. While there must be motivation to make the claimed invention, there is no requirement that the prior art provide the same reason as the applicant to make the claimed invention.

MPEP 2144 Sources of Rationale Supporting a Rejection Under 35 U.S.C. 103.  
<[http://www.uspto.gov/web/offices/pac/mpep/documents/2100\\_2144.htm](http://www.uspto.gov/web/offices/pac/mpep/documents/2100_2144.htm)>

Thus, since the green tea (which contains the epigallocatechin as taught in Mc Cook- col. 2, lines 35-45) was used as a cosmetic for the skin and also in JP where green tea was used as a cosmetic for the skin coupled with the fact that Pickart also used glycyl-L-histidyl-L-lysine: copper (II) and saline in a cosmetic for use on the skin, makes it obvious to use epigallocatechin (green tea), saline and glycyl-L-histidyl-L-lysine: copper (II) together in the same composition since they were all used individually in the art for the same purpose, namely to be used in a cosmetic for application to the skin.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 571-272-0967. The examiner can normally be reached on Monday thru Thursday: 9:30am-6:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Michael V. Meller  
Primary Examiner  
Art Unit 1655